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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 United States of America,

9 Plaintiff,

10 v.

11 Ronnie Donnie Gant,

12 Defendant.

CR 04-785-TUC-DCB (JM)

ORDER

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15 Having performed its *de novo* review of the Magistrate's Report and
16 Recommendation (document 96), *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th
17 Cir. 2003), this Court adopts the Report and Recommendation, and orders that Defendant
18 Gant's Motion to Suppress Statements (document 77) and Motion to Suppress Stop
19 (document 76) are denied.¹

20 **I. MOTION TO SUPPRESS STOP**

21 Defendant's Motion to Suppress Stop is denied.

22 Officer Winona May of the Tohono O'Odham Police Department, while on patrol
23 duty on Route 15, observed Defendant's vehicle traveling by itself. (TR 9/13/2005 at 10,
24

25 ¹ In his Objection to the Magistrate's Report and Recommendation, Defendant includes
26 arguments regarding the legality of the search of his vehicle. (Objection at 5-7) No motion regarding
27 the search of Defendant's vehicle was presented to the Magistrate and no such issue was addressed
28 in the Report and Recommendation. Thus, Defendant's arguments regarding the search of his vehicle
are outside of the scope of review authorized by 28 U.S.C. § 636, and will not be considered by this
Court.

1 16-17) Officer May was positioned at a location where the speed limit changed from 55
2 mph to 35 mph. (*Id.* at 16) When Officer May first observed Defendant's vehicle, it was
3 less than one quarter of a mile away from her position and within the 35 mph zone. (*Id.* at
4 16) Officer May testified that the distance from her position to the sign marking the 35
5 mph zone was also less than a quarter of a mile. (*Id.* at 43) According to Officer May's
6 dash-mounted radar, Defendant's vehicle was traveling 51 miles per hour in the 35 mph
7 zone. (*Id.*)

8 It is well established that evidence of a traffic violation creates sufficient
9 reasonable suspicion to stop a vehicle. *See, United States v. Lopez-Soto*, 205 F.3d 1101,
10 1104-05 (9th Cir. 2000).

11 The evidence offered by Defendant to refute Officer May's testimony was not
12 credible. First, co-Defendant Eleazar Leija testified that he spoke with Defendant Gant
13 following their arrest. (*Id.* at 75) Leija's claim that he and Defendant Gant assiduously
14 avoided any and all discussion about their arrest and the facts of this case simply strains
15 credulity. (*Id.*)

16 Regardless, even if this Court were to find Leija's testimony to be credible,
17 Leija's testimony only supports the testimony of Officer May. Leija testified that he and
18 Defendant were approximately 50 feet from Officer May's vehicle when Leija was able to
19 see the vehicle's police markings. (*Id.* at 83) According to Leija, only upon recognizing
20 Officer May's vehicle as a law enforcement vehicle did he advise Defendant to slow
21 down. (*Id.* at 83-4) Thus, based upon Leija's testimony, Defendant did not reduce his
22 speed until he was approximately 50 feet away from Officer May's vehicle and, therefore,
23 well within the 35 mph zone. Indeed, Leija later testified that Defendant was in fact
24 driving at a speed greater than the posted speed limit of 35 mph. (*Id.* at 87)

25 Of course, on redirect examination, Leija changed his testimony to reflect that he
26 identified Officer May's police vehicle from approximately a quarter of a mile away. (*Id.*

1 at 88) Leija also changed his testimony to reflect that Defendant had in fact reduced his
2 speed before ever entering the 35 mph zone. (*Id.* at 88-9) Leija's inability to keep his story
3 straight only further evidences the unreliability of his testimony.

4 There was also conflict between the testimonies of Leija and Defendant. For
5 instance, according to Leija, Defendant's speed was always relative to the speed of the
6 vehicles allegedly traveling in front of Defendant. Thus, when the other vehicles slowed
7 down, so did Defendant. (*Id.* at 69, 88-9) As such, Leija testified that upon reaching the
8 35 mph zone, the vehicles in front of Defendant and, therefore, Defendant himself, all
9 reduced their speed to the posted limit. (*Id.* at 88-9) When Defendant testified, however,
10 he claimed that only he slowed down and the vehicles in front of him all sped away. (*Id.*
11 at 97)

12 Defendant's testimony, like Leija's, also lacked credibility on its own accord. For
13 example, Defendant testified that he thought he was transporting aliens, when he was
14 actually transporting marijuana. (TR 9/14/2005 at 11) Defendant, however, was driving a
15 truck with an extended cab. (*Id.* at 34-5) The load of marijuana was in the rear section of
16 the extended cab. (*Id.*) Therefore, Defendant was in an extremely small, enclosed space
17 with several bales of marijuana.

18 Given the pungent smell of marijuana, barring some kind of neurological disorder
19 impairing his sense of smell, it is extremely unlikely that Defendant failed to appreciate
20 that there was marijuana in his vehicle. Even assuming that Defendant could not, for
21 whatever reason, smell the bales of marijuana inside the cab of his truck, this Court does
22 not believe that anyone could mistake inanimate bales of marijuana for living, breathing
23 human beings. This is particularly true when the "bodies" are stashed in the rear of a
24 truck's extended cab.

1 **II. MOTION TO SUPPRESS STATEMENTS**

2 Defendant's Motion to Suppress Statements is denied.

3 Defendant was provided with his rights and signed a waiver thereof in the
4 presence of two witnesses. (Exhibit 2) Defendant's claim that he signed the waiver
5 without reading it does not render his waiver involuntary. "Coercive polic[e] activity is a
6 'necessary predicate' to finding a confession involuntary...." *United States v. Kelley*, 925
7 F.2d 562, 565 (9th Cir. 1992). There is nothing to indicate that Defendant was in any way
8 coerced into signing the waiver of rights. In fact, it would appear that Defendant's
9 decision not to read the waiver was itself completely voluntary.

10 Furthermore, Agent William Dreeland of Immigrations and Customs
11 Enforcement testified that he read the Statement of Rights form to Defendant. (TR
12 9/14/2005 at 48) Agent Dreeland also asked Defendant if he understood his rights and if
13 he had any questions. (*Id.*) Only then did Agent Dreeland ask Defendant to sign the
14 waiver of his rights. In fact, the Statement of Rights form clearly indicates that Agent
15 Dreeland read Defendant his rights two minutes before Defendant signed the waiver.
16 (Exhibit 2)


17 Defendant's testimony to the contrary lacks credibility, for the reasons set forth
18 above.

19 **Accordingly,**

20 **IT IS ORDERED** that Defendant Gant's Motion to Suppress Statements
21 (document 77) and Motion to Suppress Stop (document 76) are denied.

22 **DATED this 25th day of October, 2005.**

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David C. Bury
United States District Judge

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